

AMENDMENTS TO THE DRAWINGS

The attached “Replacement Sheet” of drawings includes changes to Figure 3.

The attached “Replacement Sheet,” which includes Figure 3 replaces the original sheet including Figure 3.

REMARKS

Claims 2-45 are now pending in the application. Minor amendments have been made to the specification and claims to simply overcome the objection to the specification. In many cases, the amendments to the claims contained herein are of equivalent scope as originally filed and, thus, are not a narrowing amendment. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

DRAWINGS

The drawings stand objected to in light of a certain informality. Applicants have attached revised drawings for the Examiner's approval. In the "Replacement Sheet" Figure 3 now includes reference numeral 56 as described on page 7 of the originally filed specification.

SPECIFICATION

The specification stands objected to for a certain informality. Applicants have amended the specification. Therefore, reconsideration and withdrawal of this objection are respectfully requested.

REJECTION UNDER 35 U.S.C. § 102

Claims 1-4, 10, 11, and 14-17 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Luedtke (U.S. Pat. No. 4,103,373). Claims 1-4, 10, 11, 14, and 17 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Teufel (U.S. Pat. No.

482,028). Claims 1-4, 10, 11, 14, and 17 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Anderson (U.S. Pat. No. 950,362). Claims 1-4 and 10-17 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Sherman (U.S. Pat. No. 6,401,276). These rejections are respectfully traversed.

At the outset, Applicants note that by way of the present amendment, independent Claim 1 has been cancelled and Claims 2, 10, and 14-17 have been amended to depend from Claim 5. Therefore, it is respectfully submitted that the present rejections based upon Luedtke, Teufel, and Anderson have now been rendered moot.

Similarly, the present rejection of Claims 12 and 13 based solely upon the teachings of Sherman (set forth in paragraph 7 of the present Office Action) is respectfully traversed. Specifically, Applicants submit that Sherman fails to teach each and every claim limitation of Claim 12 and, thus, fails to anticipate the present invention. With particular reference to Claim 12, Applicants note that Sherman fails to teach or suggest a "torsion system providing torsional energy to aid in moving said upper platform between said lowered position and said raised position, said torsion system operably coupled between said frame assembly and said upper platform." In fact, Sherman merely teaches an extension spring 58 that is extended to provide a biasing force. In contrast, the torsion system of the present invention provides advantage over conventional extension spring design, such as improved biasing force in an improved packaging design. The Examiner is reminded that the *American Heritage Dictionary* defines "torsional" as "the stress or deformation caused when one end of an object is twisted in one direction and the other end is held motionless or twisted in the opposite

direction." Clearly, the extension spring 58 of Sherman does not provide torsional energy or the like and, thus, fails to teach or suggest the claimed invention. Reconsideration and withdrawal of the present rejections are respectfully requested.

REJECTION UNDER 35 U.S.C. § 103

Claims 12 and 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Luedtke et al in view of Reppas '195, Drexhage '568, or Reppas '930. This rejection is respectfully traversed.

A. THE EXAMINER HAS FAILED TO ESTABLISH A PRIMA FACIE CASE OF OBVIOUSNESS

Applicants submit that the Examiner has failed to establish a *prima facie* case of obviousness as required by *Graham v. John Deere Co.*, 148 USPQ 459 (1966) and MPEP § 2141. Specifically, the following tenets of patent law must be adhered to:

- (A) The claimed invention must be considered as a whole;
- (B) The *references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination;*
- (C) The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and
- (D) *Reasonable expectation of success is the standard with which obviousness is determined.*

MPEP § 2141.01

1. THE PRIOR ART MUST SUGGEST THE DESIRABILITY OF THE CLAIMED INVENTION; HOWEVER, NEITHER LUEDTKE NOR REPPAS OR DREXHAGE INCLUDES SUCH SUGGESTION OF DESIRABILITY OF THE CLAIMED INVENTION.

There is no teaching, suggestion, or motivation set forth in Luedtke or Reppas or Drexhage to combine these references to produce the claimed invention. "Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art." MPEP § 2143.01 (emphasis added); *In re Fine*, 5 USPQ2d 1596 (Fed. Cir. 1988).

Specifically, there is no teaching, suggestion, or motivation in any of the cited references themselves that would suggest using the combination of a torsional system AND counterbalance member to aid in the lifting of the platform or bed. The Examiner is merely attempting to combine the teachings of the cited references to invent the present invention without any explicit motivation to combine such teachings. The most recent Office Action is completely silent of any recitation that would direct the Applicant to where such motivation can be found. The citations provided by the Examiner merely identify areas of the prior art that, as shown above, do not teach what the Examiner asserts.

It is readily apparent that neither Luedtke, Reppas, or Drexhage provides any teaching, suggestion, or motivation to combine their teachings. Thus, without a teaching, suggestion, or motivation clearly found in within the text of these references, it is improper to combine these references to establish a rejection of obviousness, unless the Examiner can show that such teaching, suggestion, or motivation is generally available in the knowledge of one skilled in the art.

I. The Examiner Must Present A Convincing Line Of Reasoning As To Why The Artisan Would Have Found The Present Invention Obvious.

The Examiner must present a convincing line of reasoning as to why one skilled in the art would have combined these references. According to MPEP § 2142, it is the Examiner's initial burden to provide some suggestion of the desirability of doing what the inventor has done. Specifically, "[t]o support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985).

In the absence of any objective evidence or any convincing line of reasoning to combine these references, Applicants respectfully submit that each of the references, either singly or in combination, fail to teach or suggest the claimed invention and, thus, the Examiner has failed to establish a *prima facie* case of obviousness. Reconsideration and withdrawal of the present rejections are respectfully requested.

II. The Examiner's Proposed Combination Changes the Principles of Operation of the References

Applicant submits that the Examiner's proposed combination of Luedtke and Reppas or Drexhage changes the principles of operation of each of these references. Specifically, Luedtke employs a counterweight system 20 to provide ALL of the necessary force to aid in the lifting of mattress frame 21. Alternatively, Reppas and Drexhage employ a torsion system to provide ALL of the necessary force to aid in the

lifting of the moveable portion. It is important to note that NONE of the cited references suggest that their systems fails to provide the necessary force all by themselves. Therefore, these references teach away from adding a second lifting mechanism as claimed in the present application. The present application has identified the benefits and advantages of combining these systems to minimize the size and expense of the torsion system. Therefore, the combination of Luedtke and Reppas or Drexhage contravenes established principles set forth in MPEP § 2143.01. Specifically, MPEP § 2143.01 states that "[i]f the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teaching of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810 (CCPA 1959)." Accordingly, in light of the above, Applicant demands that such a combination is improper and may not be used as a *prima facie* obvious combination. Reconsideration and withdrawal of the present rejection are respectfully requested.

Claims 18-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Luedtke in view of Burchett. Claims 18-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sherman in view of Burchett. This rejection is respectfully traversed.

A. THE CITED PRIOR ART FAILS TO TEACH EACH AND EVERY ELEMENT OF THE CLAIMS

Applicants respectfully submit that Luedtke, Sherman, and Burchett fail to teach each and every element of the claimed invention. Specifically, Applicants respectfully

note that Claims 18 and 19 have been amended to now depend from Claim 5, thereby rendering this portion of the rejection moot.

With regard to Claim 20, Applicants respectfully submit that Luedtke, Sherman, and Burchett fail to teach or suggest a "cutout formed in said side member of said frame assembly to permit access to said table surface from said upper platform." In other words, Luedtke and Burchett suffer from the same failure of the prior art in that the vertical side portions of the frame block the use of any side table surfaces. That is, when the bed is lowered, a wall remains between the side table surface and the mattress cavity. Any attempt to reach an item on the side table surface would require one to reach around this vertical side portion. However, as claimed in Claim 20, the present invention provides a cutout 110 formed in the vertical side portions to permit easy access to any item upon the side table surface. Reconsideration and withdrawal of the present rejection are respectfully requested.

Claims 5-9 and 21-45 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sherman in view of George '811, Berry et al. '247, or Japanese document '258. This rejection is respectfully traversed.

A. THE EXAMINER HAS FAILED TO ESTABLISH A PRIMA FACIE CASE OF OBVIOUSNESS

Applicants submit that the Examiner has failed to establish a *prima facie* case of obviousness as required by *Graham v. John Deere Co.*, 148 USPQ 459 (1966) and MPEP § 2141. Specifically, the following tenets of patent law must be adhered to:

- (A) The claimed invention must be considered as a whole;

- (B) The *references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination;*
- (C) The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and
- (D) *Reasonable expectation of success is the standard with which obviousness is determined.*

MPEP § 2141.01

1. THE EXAMINER HAS FAILED TO CONSIDER THE CLAIMED INVENTION AS A WHOLE.

In the most recent Office Action, the Examiner has wholly rejected Claims 5-9 and 21-45 in view of Sherman and George, Berry, or the Japanese Document simply because "George, Berry et al. and Japanese document '258 all teach an L-shaped hinge (see Figs 2, 8 and 2 respectively). It would have been considered obvious to one of ordinary skill in the art to modify Sherman by substituting the L-shaped hinge as taught by either George or Berry et al. or Japanese document '258 for the hinge (66, see Sherman col. 6) disclosed by Sherman since it is a design choice to substitute equivalent parts for performing equivalent functions."

However, Applicants submit that the Examiner has failed to consider claim elements in Claims 5-9 and 21-45 that are not present in the cited references. For instance, the cited references fail to teach or suggest "said axis being offset from at least one of said upper platform and said lower platform so as to define a spacing distance between said upper platform and said lower platform" (Claims 5, 21, 35), "said spacing distance is sufficient to accommodate items positioned on top of said lower platform" (Claims 6, 30, 39), "a self-standing support pivotally coupled between said frame assembly and said lower platform, said upper platform being pivotally coupled

with said lower platform in parallelogram linkage geometry with said self-standing support and said frame assembly for maintaining a horizontal orientation of said lower platform throughout the raising and lowering of said upper platform" (Claims 8, 32, 41), "wherein said lower platform is a table" (Claims 9, 33), " wherein said first platform is a bed frame" (Claim 34), or "a torsion system providing energy to aid in moving said upper platform between said lowered position and said raised position, said torsion system operably coupled between said frame assembly and said upper platform" (Claim 44).

The Examiner is obligated to identify where in the prior art such features are taught or suggested. Applicants respectfully submit that such claimed features are not found in combination with the other patentable features of the present invention. Reconsideration and withdrawal of the present rejection are respectfully requested.

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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By: 
Jeffrey L. Snyder, Reg. No. 43,141

HARNESS, DICKEY & PIERCE, P.L.C.
P.O. Box 828
Bloomfield Hills, Michigan 48303
(248) 641-1600

JLS/smb